

and territorial integrity of Ukraine. The state shall protect the rights and freedoms of the citizens, create proper conditions to exercise their rights. Under the Constitution the main duty of the state is to establish and ensure human rights and freedoms [5: Article 3], and Ukraine guarantees care and protection to all the citizens staying abroad [5: Article 25].

Thus, we can say that, the citizenship of Ukraine is an officially recognized legal status of a person due to his/her belonging to our country and people, it results in the emergence of reciprocal rights and duties of both the citizens and the state.

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## INSTITUTE OF LUSTRATION IN THE CONSTITUTIONAL LAW OF FOREIGN COUNTRIES

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Lustration is characterized by the fact that the majority of its procedures is often beyond legal norms that are standard within the legal framework of a state. Laws on lustration provide the possibility of punishment for activities or divergence from activities which under the law of the former political and legal system were not crimes. It concerns the employees of intelligence services, governing bodies, judicial authorities, etc. Thus, the main legal problem of lustration laws is that they have retroactive force.

All the available concepts of lustration display the process of identifying the facts of commission offenses committed by the officials for the purpose of their further occupation of the state positions.

The **significance** of this paper is determined by the fact that the institute of lustration is being formed in Ukraine, and it is aimed at clearing our state bodies from dishonest employees. The problem of lustration has been analyzed in the works of both Ukrainian and foreign scholars, among them are the works by N.E. Minenkova [5], S.V. Poltavets [7], G. Schwartz [4], and others.

The **goal** of the research is to identify the shortcomings and difficulties encountered in the Ukrainian and foreign legislations during the process of making lustration laws.

Lustration can be defined as a ban for the governmental figures of higher ranks, who have compromised themselves, to: 1) hold positions in government; 2) stand for representative bodies; 3) be judges, etc. for a certain period of time or for life.

Lustration laws establish special requirements which regulate the access and staying in public service and define the procedure of checking if a person who holds a certain state position or intends to hold such a position cooperated with the repressive bodies of the dumped authoritarian regime [2]. Such laws have no relation to the area of the criminal law. By their legal nature lustration laws are aimed at the reorganization of the state officialdom and attraction to the work in state structures the people whose devotion to a new democratic regime is beyond any doubt.

However, lustration can be considered also as the establishment of a presumption of the collective fault [1]. Moreover, lustration can serve as a tool of political struggle. On the other hand, as the history of the states of the Central Europe testifies, the lack of the lustration legislation can also cause considerable abuses of power.

As far as the transition from authoritarian regimes to democracy in many countries of the Central and Eastern Europe was followed by lustration processes that were rather contradictory, the Parliamentary Assembly of the Council of Europe adopted Resolution 1096 in 1996, it was entitled “About Actions Concerning Overcoming of Consequences of the Last Communistic Totalitarian Systems” [6]. This resolution includes the approved instructions on ensuring the control over the implementation of the lustration laws and similar administrative activities according to the requirements of the constitutional state.

Lustration took place in the majority of the post-communist countries of Eastern Europe in the 80-s of the 20<sup>th</sup> century. The experience of many countries in the implementation of lustration proves that considerable positive results in this sphere are possible. Let's consider the achievements of the Czech Republic, Poland, Hungary, and Baltic states.

**The Czech Republic** [3]. On July 9, 1993, the Czech Parliament passed the law on the illegitimacy of the Communist regime and resistance to it. The law declared the former Communist Party “illegitimate” and “criminal,” and attempted to honor those persons who “on the basis of democratic, moral or religious conviction” fought against the Communist Party.

**Poland** [8]. When the state power from the communists passed to the opposition ("Solidarity"), the new government guaranteed inviolability to the former communists. But the society insisted on lustration in 1997. The law was applied to ministers, deputies, senators, judges and officials, the former employees or agents of the bodies of state security of the PPR.

**Hungary** [8]. The Law of Zeten-Takach of 1992 established criminal responsibility without limitation period up to life imprisonment for persons who within the period of December, 1944 – May, 1990 made treason to the Motherland. It

was the first stage of lustration (1992-1994). The second stage of lustration (1994-2001) aimed only at achieving a high level of informing the public on the activities of the representatives of public power. On May 30, 2005 the parliament opened broad access to the documents on the agents of intelligence services that used to be confidential. Lustration in Hungary lost its repressive character.

**The Baltic States.** Here the question of lustration was raised for the first time in 1990. In Estonia they adopted the law on extrajudicial mass repressions in the Soviet Estonia in 1940-1950 according to which the Estonian Soviet Socialist Republic was entrusted to prosecutor's office to consider the starting of criminal cases and attraction to criminal responsibility the persons guilty of massacre and other crimes against humanity.

The Latvian Law on elections of 1992 [9] demanded from all the candidates to parliament to submit a written statement about the existence of connections with the Soviet or other secret services or the lack of such connections. Since 1995 the law on elections forbids the election of persons who were members of the Communist Party and co-operated with it after January 13, 1991, and it also concerns the officers and agents of the KGB. A similar ban is imposed on naturalization by the Law 'On Nationality' of 1994.

In Lithuania [10] the law on the verification of mandates of the deputies suspected of conscious cooperation with the secret services of the USSR or other states was adopted.

Summing up, we should note that the legal aspects of lustration are widely examined by foreign scholars, while in Ukraine this problem is mostly discussed only in mass media. Thus, this issue requires further analysis, since the problem of the institute of lustration is very important and the national legislation needs further development of this sphere of law.

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